

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

PATRICIA SEWELL,

Plaintiff,

vs.

**THARON DOUGLAS COWELL and
ZOELLNER CONSTRUCTION CO., INC.,**

Defendants.

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CIVIL ACTION NO. 4:15-cv-00695-O

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff Patricia Sewell files this First Amended Complaint complaining of Defendants Tharon Douglas Cowell and Zoellner Construction Co., Inc., and for causes of action respectfully shows the Court as follows:

**I.
PARTIES**

1. Plaintiff Patricia Sewell ("Sewell") is an individual residing in Tarrant County, Texas. The last three numbers of Sewell's driver's license number are 012. The last three numbers of Sewell's social security number are 188.

2. Defendant Tharon Douglas Cowell ("Cowell") is a resident of Missouri. Cowell has answered and made an appearance in this action.

3. Defendant Zoellner Construction Co., Inc. ("Zoellner Construction") is a Missouri corporation with its principal place of business located at 875 PCR 500, Perryville, Missouri 63775. Zoellner Construction has answered and made an appearance in this action.

II. BACKGROUND

4. Sewell filed this action against Defendants in the 415th District Court of Parker County, Texas.

5. Defendants answered the state court lawsuit on September 10, 2015 and then removed this action to federal court based on diversity jurisdiction under 28 U.S.C. § 1332(a). Defendants filed a notice of removal on September 17, 2015.

6. This First Amended Complaint is timely filed pursuant to Fed. R. Civ. P. 15(a).

III. JURISDICTION AND VENUE

7. Defendants removed this case to federal court based on a complete diversity between the parties. 28 U.S.C. § 1332(a).

8. Sewell is a citizen of Tarrant County, Texas. Cowell is a citizen of the State of Missouri. Zoellner Construction is a corporation incorporated in the State of Missouri with its principle place of business in the state of Missouri.

9. The amount in controversy exceeds \$75,000, excluding interest, costs, and attorneys' fees.

10. Venue is proper in this district under 28 U.S.C. § 1441(a) because the state court where the action was pending is located in this district.

IV. FACTS

11. On or about October 4, 2013, Sewell was driving northbound on Highway 171 in Weatherford, Parker County, Texas. At that same time, Cowell was driving southbound on Highway 171. Suddenly and without warning, Cowell attempted to make a left turn into a private drive. While attempting this turn, Cowell's vehicle violently struck the driver's side of

Sewell's vehicle. The damage was so severe that both vehicles had to be towed from the scene of the wreck.

12. As a result of the collision, Sewell sustained bodily injury.

V. CAUSES OF ACTION

A. Negligence

13. Cowell had the duty to use ordinary care in driving his vehicle.

14. Cowell breached this duty and was negligent in various acts and omissions at the time of the wreck by, among other things, failing to yield the right of way to Sewell.

15. Cowell's negligence proximately caused the occurrence made the basis of this action and Sewell's injuries and damages.

B. Vicarious Liability

16. Upon information and belief, Cowell was an employee of Zoellner Construction at the time of the wreck.

17. Further, upon information and belief, Cowell was acting in the course and scope of his employment with Zoellner at the time of the wreck.

18. As such, Zoellner Construction is vicariously liable for the negligence of Cowell.

VI. DAMAGES

19. As a direct and proximate result of the foregoing acts of negligence, Sewell suffered physical injuries, for which she seeks recovery. In this regard, Sewell seeks monetary relief over \$1,000,000.

20. Based on the foregoing, Sewell's personal injury damages include:

- a. Physical pain and mental anguish in the past and future;
- b. Physical impairment in the past and future; and

- c. Medical expenses in the past and future.

**VII.
JURY DEMAND**

21. Both parties filed demands for trial by jury before this case was removed to federal court.

WHEREFORE, Sewell prays that Cowell and Zoellner Construction be cited to appear and answer, and that a judgment be entered against them for:

- a. Actual Damages;
- b. Pre-judgment and post-judgment interest as provided by law;
- c. Costs of suit; and
- d. Such other and further relief, whether at law or in equity, to which Sewell may be entitled.

Respectfully submitted,

CURNUTT & HAFER, L.L.P.

By: /s/Douglas R. Hafer

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument was delivered via e-service to the following counsel of record this 28th day of September, 2015, as follows:

Dana L. Ryan
David Klosterboer & Associates
1301 E. Collins Blvd., Suite 490
Richardson, Texas 75081
ATTORNEY FOR DEFENDANTS
THARON DOUGLAS COWELL AND
ZOELLNER CONSTRUCTION CO., INC.

/s/Douglas R. Hafer

Douglas R. Hafer